

FIRST REGULAR SESSION

# SENATE BILL NO. 306

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time February 21, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1302S.011

## AN ACT

To repeal sections 370.100, 370.157, 370.310, 370.320, 370.353, and 370.359, RSMo, and to enact in lieu thereof thirteen new sections relating to credit unions, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 370.100, 370.157, 370.310, 370.320, 370.353, and 370.359, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 370.100, 370.101, 370.102, 370.157, 370.161, 370.162, 370.163, 370.164, 370.165, 370.310, 370.320, 370.353, and 370.359, to read as follows:

370.100. 1. There is created within the state [division of finance, a supervisor of credit unions] **department of insurance, financial institutions and professional registration, a director of the division of credit unions** who shall have exclusive supervision of all credit unions operating under the laws of this state and may make necessary rules and regulations to carry out the provisions of this chapter.

2. The [supervisor] **director** of credit unions shall be appointed by the commissioner of finance to serve at his **or her** pleasure.

3. The [supervisor] **director** of credit unions shall maintain his **or her** office at Jefferson City, Missouri, and shall devote all of his **or her** time to the duties of his **or her** office.

4. No person shall be eligible to be appointed to the office unless he **or she** has had at least three years actual practical experience with credit union operation or unless he **or she** has served for the same period of time in the agency having charge of credit union operation in this or some other state of the

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

16 United States, or in the national credit union administration.

17           5. The [supervisor of credit unions, with the approval of the commissioner  
18 of finance,] **director** may appoint a deputy [supervisor] **director** of credit  
19 unions and such examiners, assistant examiners and other employees and  
20 assistants as he **or she** shall deem necessary to properly discharge his **or her**  
21 duties as [supervisor of credit unions] **directors**.

22           6. The actual and necessary traveling and other divisional or office  
23 expenses of the [supervisor of credit unions] **director**, the deputy [supervisor]  
24 **director**, and other assistants and employees shall be paid out of the state  
25 treasury as provided by law.

26           7. The examiners and any person appointed as deputy [supervisor]  
27 **director** shall possess the qualifications required for the [supervisor of credit  
28 unions, except that any person who was, prior to the date of the enactment of this  
29 law, employed by the state division of finance and whose duties were, at the time  
30 of the enactment of this law, principally concerned with credit unions and had  
31 been so concerned for not less than one year shall be eligible to serve as deputy  
32 supervisor or examiner. Appointment of examiners and assistant examiners shall  
33 be so made that, as near as may be, one-half of their number, respectively, shall  
34 be members of the political party polling the highest number of votes for governor  
35 at the last preceding state election, the remaining one-half shall be members of  
36 the political party polling the next highest number of votes for governor at the  
37 last preceding state election] **director**.

38           8. All persons appointed by the [supervisor of credit unions] **director** as  
39 authorized herein shall perform the duties required of them by the [supervisor  
40 of credit unions] **director**, and shall devote all of their time to their official  
41 duties.

370.101. 1. **The director of the division of credit unions and all  
2 employees of the division of credit unions, which term shall, for  
3 purposes of this section, include special agents, shall, before entering  
4 upon the discharge of their duties, take an oath that they will not  
5 reveal the conditions or affairs of any credit union or any facts  
6 pertaining to the same, that may come to their knowledge by virtue of  
7 their official positions, unless required by law to do so in the discharge  
8 of the duties of their offices or when testifying in any court  
9 proceeding. For purposes of this section, "credit union" shall mean any  
10 entity subject to chartering, licensing, or regulation by the division of**

11 credit unions.

12           2. Neither the director of the division of credit unions nor any  
13 employees of the division of credit unions who participate in the  
14 examination of any credit union, or who may be called upon to make  
15 any official decision or determination affecting the operation of any  
16 credit union, other than the members of the credit union commission,  
17 shall be an officer or director of any credit union the division of credit  
18 unions regulates, nor shall they receive, directly or indirectly, any  
19 payment or gratuity from any such organization, nor engage in the  
20 negotiation of loans for others with any state-chartered credit union,  
21 nor shall be indebted to any state-chartered credit union.

22           3. The director of the division of credit unions, in connection  
23 with any examination or investigation of any person, company, or  
24 event, shall have the authority to compel the production of documents,  
25 in whatever form they may exist, and shall have the authority to  
26 compel the attendance of and administer oaths to any person having  
27 knowledge of any issue involved with the examination or  
28 investigation. The director may seek judicial enforcement of an  
29 administrative subpoena by application to the appropriate court. An  
30 administrative subpoena shall be subject to the same defenses or  
31 subject to a protective order or conditions as provided and deemed  
32 appropriate by the court in accordance with the Missouri supreme  
33 court rules.

          370.102. 1. To ensure the integrity of the examination process,  
2 the director of the division of credit unions and all employees of the  
3 division of credit unions, and its special agents, shall be bound under  
4 oath to keep secret all facts and information obtained in the course of  
5 all examinations and investigations except:

6           (1) To the extent that the public duty of the director requires the  
7 director to report information to another government official or agency  
8 or take administrative or judicial enforcement action regarding the  
9 affairs of a state-chartered credit union;

10           (2) When called as a witness in a court proceeding relating to  
11 such state-chartered credit union's safety and soundness or in any  
12 criminal proceeding;

13           (3) When reporting on the condition of the state-chartered credit  
14 union to the officers and directors of the state-chartered credit union;

15           (4) When reporting findings to a complainant, provided the  
16 disclosure is limited to such complainant's account information;

17           (5) When exchanging information with any agency which  
18 regulates financial institutions under federal law or the laws of any  
19 state when the director of the division of credit unions determines that  
20 the sharing of information is necessary for the proper performance by  
21 the director of the division of credit unions and the other agencies, that  
22 such information will remain confidential as though subject to section  
23 370.101 and this section and that said agencies routinely share  
24 information with the division of credit unions;

25           (6) When authorized by the state-chartered credit union's board  
26 of directors to provide the information to anyone else; or

27           (7) When disclosure is necessary or required, the director may  
28 set conditions and limitations, including an agreement of  
29 confidentiality or a judicial or administrative protective order.

30           2. In all other circumstances, facts and information obtained by  
31 the director of the division of credit unions and the employees and  
32 special agents of the division of credit unions through examinations or  
33 investigations shall be held in confidence absent a court's finding of  
34 compelling reasons for disclosure. Such finding shall demonstrate that  
35 the need for the information sought outweighs the public interest in  
36 free and open communications during the examination or investigation  
37 process. To assure a meaningful hearing, any state-chartered credit  
38 union that is not already a party to the judicial proceeding and whose  
39 information is the subject of a records request or subpoena shall be  
40 joined or notified and permitted to intervene in the hearing and to  
41 participate regarding the production request or subpoena. In no event  
42 shall a state-chartered credit union, or any officer, director, or  
43 employee thereof, be charged with libel, slander, or defamation for any  
44 good faith communications with the director of the division of credit  
45 unions or any employees of the division of credit unions.

46           3. If the director or any employees or special agents of the  
47 division of credit unions disclose the name of any member of any state-  
48 chartered credit union or disclose any facts obtained in the course of  
49 any examination or investigation of any state-chartered credit union,  
50 except as herein provided, the disclosing party shall be deemed guilty  
51 of a misdemeanor and upon conviction shall be subject to forfeiture of

52 **office and the payment of a fine not to exceed one thousand dollars.**

370.157. 1. [The director may remove any or all the officers, committee  
2 members and directors and either appoint successors or call a meeting of the  
3 members to hold elections, notice of the meeting to be given as provided in this  
4 section for special meetings of the members for reorganization.

5 2. Unless removed by the director, the officers, committee members and  
6 directors shall continue in their respective offices until their successors are  
7 elected and qualify] **Whenever it shall appear to the director, from any  
8 examination made by him or her or her or his examiners, that any  
9 director, officer, or any other person participating in the conduct of the  
10 affairs of a credit union subject to this chapter has committed any  
11 violation of law or regulation or of a cease and desist order, or has  
12 violated any condition imposed in writing by the director or any  
13 written agreement between such credit union and the director, or has  
14 engaged or participated in any unsafe or unsound practice in  
15 connection with the credit union, or has committed or engaged in any  
16 act, omission, or practice which constitutes a breach of his or her  
17 fiduciary duty to the credit union, and the director determines that the  
18 credit union has suffered or will probably suffer financial loss or other  
19 damage or that the interests of its members could be prejudiced by  
20 reason of such violation or practice or breach of fiduciary duty, or that  
21 the director or officer or other person has received financial gain by  
22 reason of such violation or practice or breach of fiduciary duty, and  
23 such violation or practice or breach of fiduciary duty is one involving  
24 personal dishonesty on the part of such director, officer or other  
25 person, or one which demonstrates a willful or continuing disregard for  
26 the safety or soundness of the credit union, the director may serve  
27 upon such director, officer, or other person a written notice of his or  
28 her intention to remove such person from office.**

29 2. When it shall appear to the director from any examination  
30 made by him or her or his or her examiners that any director, officer,  
31 or any other person participating in the conduct of the affairs of a  
32 credit union subject to this chapter, by conduct or practice with  
33 respect to another such credit union or any business institution which  
34 resulted in financial loss or other damage, has evidenced either his or  
35 her personal dishonesty or a willful or continuing disregard for its  
36 safety and soundness and, in addition, has evidenced his or her

37   unfitness to continue as a director or officer and whenever it shall  
38   appear to the director that any other person participating in the  
39   conduct of the affairs of a credit union subject to this chapter, by  
40   conduct or practice with respect to such credit union or other  
41   corporation or other business institution which resulted in financial  
42   loss or other damage, has evidenced either his or her personal  
43   dishonesty or willful or continuing disregard for its safety and  
44   soundness and, in addition, has evidenced his or her unfitness to  
45   participate in the conduct of the affairs of such credit union, the  
46   director may serve upon such director, officer, or other person a  
47   written notice of intention to remove him or her from office or to  
48   prohibit his or her further participation in any manner in the conduct  
49   of the affairs of this credit union or from any other credit union  
50   supervised by the director.

51           3. Whenever it shall appear to the director to be necessary for  
52   the protection of any credit union or its members, he or she may, by  
53   written notice to such effect served upon any director, officer, or other  
54   person referred to in subsection 1 or 2 of this section, suspend him or  
55   her from office or prohibit him or her from further participation in any  
56   manner in the conduct of the affairs of the credit union. Such  
57   suspension or prohibition shall become effective upon service of such  
58   notice and shall remain in effect pending the completion of the  
59   administrative proceedings pursuant to the notice served under  
60   subsection 1 or 2 of this section and until such time as the director  
61   shall dismiss the charges specified in such notice or, if an order of  
62   removal or prohibition is issued against the director or officer or other  
63   person, until the effective date of any such order. Copies of any such  
64   notice shall also be served upon the credit union of which he or she is  
65   a director or officer or in the conduct of whose affairs he or she has  
66   participated.

67           4. Except as provided in subsection 5 of this section, any person  
68   who, pursuant to an order issued under this section, has been removed  
69   or suspended from office in a credit union or prohibited from  
70   participating in the conduct of the affairs of a credit union may not,  
71   while such order is in effect, continue or commence to hold any office  
72   in, or participate in any manner in, the conduct of the affairs of any  
73   other credit union subject to the provisions of this chapter.

74           5. If, on or after the date an order is issued under this section  
75 which removes or suspends from office any person or prohibits such  
76 person from participating in the conduct of the affairs of a credit  
77 union, such party receives the written consent of the director,  
78 subsection 4 of this section shall, to the extent of such consent, cease  
79 to apply to such person with respect to the credit union described in  
80 the written consent and the director shall publicly disclose such  
81 consent. Any violation of subsection 4 of this section by any person  
82 who is subject to an order described in such subsection shall be treated  
83 as a violation of the order.

          370.161. A notice of intention to remove a director, officer, or  
2 other person from office or to prohibit his or her participation in the  
3 conduct of the affairs of a credit union shall contain a statement of the  
4 facts constituting grounds therefor, and shall fix a time and place at  
5 which a hearing will be held thereon. Unless such director, officer, or  
6 other person shall appear at the hearing in person, or by a duly  
7 authorized representative, he or she shall be deemed to have consented  
8 to the issuance of an order of such removal or prohibition. In the event  
9 of such consent or if upon the record made at any such hearing the  
10 director shall find that any of the grounds specified in such notice have  
11 been established, the director may issue such orders of suspension or  
12 removal from office, or prohibition from participation in the conduct  
13 of the affairs of the credit union, as he or she may deem  
14 appropriate. Any such order shall become effective at the expiration  
15 of thirty days after service upon such credit union and the director,  
16 officer, or other person concerned (except in the case of an order  
17 issued upon consent, which shall become effective at the time specified  
18 therein). Such order shall remain effective and enforceable except to  
19 such extent as it is stayed, modified, terminated, or set aside by action  
20 of the director or a reviewing court.

          370.162. Within ten days after any director, officer, or other  
2 person has been suspended from office, prohibited from participation  
3 in the conduct of the affairs of a credit union, or both, under subsection  
4 3 of section 370.157, such director, officer, or other person may apply  
5 to the circuit court of the county in which the credit union is located  
6 or the circuit court of Cole County, for a stay of such suspension or  
7 prohibition pending the completion of the administrative proceedings

8 pursuant to the notice served upon such director, officer, or other  
9 person under subsection 1 or 2 of section 370.157, and such court shall  
10 have jurisdiction to stay such suspension or prohibition.

370.163. Whenever a director or officer of a credit union, or other  
2 person participating in the conduct of the affairs of such credit union,  
3 is charged in any information or complaint authorized by a prosecuting  
4 attorney or a United States attorney, or in any indictment, with the  
5 commission of or participation in a crime involving dishonesty or  
6 breach of trust which is punishable by imprisonment for a term  
7 exceeding one year under state or federal law, the director may, if  
8 continued service or participation by the individual may pose a threat  
9 to the interests of the credit union's members or may threaten to  
10 impair the confidence in the credit union, by written notice served  
11 upon such director, officer, or other person, suspend him or her from  
12 office or prohibit him or her from further participation in any manner  
13 in the conduct of the affairs of the credit union. A copy of such notice  
14 shall also be served upon the credit union. Such suspension or  
15 prohibition shall remain in effect until such information, indictment or  
16 complaint is finally disposed of or until terminated by the director. In  
17 the event that a judgment of conviction with respect to such crime is  
18 entered against such director, officer, or other person, and at such time  
19 as such judgment is not subject to further appellate review, the  
20 director may, if continued service or participation by the individual  
21 may pose a threat to the interests of the credit union's members or may  
22 threaten to impair public confidence in the credit union, initiate action  
23 to remove such officer as described in subsection 1 of section 370.157.

370.164. If at any time because of the suspension of one or more  
2 directors pursuant to sections 370.157 or 370.161 to 370.165 there shall  
3 be on the board of directors of a credit union less than a quorum of  
4 directors not so suspended, all powers or functions vested in or  
5 exercisable by such board shall vest in and be exercisable by the  
6 director or directors on the board not so suspended, until such time as  
7 there shall be a quorum of the board of directors. In the event all of  
8 the directors of a corporation are suspended pursuant to sections  
9 370.157 or 370.161 to 370.165, the director shall appoint persons to serve  
10 temporarily as directors in their place and stead pending the  
11 termination of such suspensions, or until such time as those who have



12 **been suspended cease to be directors of the credit union and their**  
13 **respective successors take office.**

370.165. A notice of suspension or order of removal issued  
2 pursuant to this chapter shall become effective immediately but any  
3 director, officer, or other person concerned may, within thirty days of  
4 service of any notice of suspension or order of removal, request, in  
5 writing, an opportunity to appear before the director to show that the  
6 continued service to or participation in the conduct of the affairs of the  
7 credit union by such individual does not, or is not likely to, pose a  
8 threat to the interests of the credit union's depositors or threaten to  
9 impair public confidence in the credit union.

370.310. 1. A credit union may lend to its members, as herein provided,  
2 for such purposes and upon such security as the bylaws provide and the credit  
3 committee or credit manager shall approve, provided that no secured or  
4 unsecured loan shall be made in excess of two thousand dollars, except that if ten  
5 percent of the assets of the credit union exceeds two thousand dollars then the  
6 maximum amount of a loan by the credit union shall be ten percent of its assets,  
7 and unsecured loans to any one member shall not exceed the limitations found  
8 in current written policies of the board of directors.

9 2. A member who needs funds with which to purchase necessary supplies  
10 for growing crops may receive a loan in installments instead of one sum.

11 3. A borrower may repay the whole or any part of his loan on any day on  
12 which the office of the credit union is open for the transaction of business.

13 4. All loans to directors, credit and supervisory committee members of the  
14 credit union shall comply with all the requirements in this chapter and the credit  
15 union bylaws with respect to loans to other members and may not be on terms  
16 more favorable than those of loans extended to other member-borrowers [except  
17 that such loans, other than those secured by mortgages on primary and secondary  
18 borrower-occupied residences, negotiable securities, licensed motor vehicles, or  
19 shares shall not exceed twenty-five thousand dollars for each official] and such  
20 loans shall also be reported at the next regularly scheduled meeting of the board  
21 of directors; and further, all such loans shall be reported to the director of the  
22 division of credit unions annually.

370.320. [1. All entrance fees, transfer fees and charges shall, after the  
2 payment of the organization expenses, be known as reserve income, and shall be  
3 added to the reserve fund of the credit union.

4           2. At the end of each accounting period the gross income shall be  
5 determined. From this amount there shall be set apart to the reserve fund  
6 amounts in accord with the following schedule:

7           (1) A credit union in operation for more than four years and having assets  
8 of five hundred thousand dollars or more shall set aside:

9           (a) Ten percent of gross income until the reserve equals four percent of  
10 the outstanding loans to members; and thereafter

11           (b) Five percent of gross income until the reserve equals six percent of  
12 outstanding loans to members; or

13           (2) A credit union in operation less than four years or having assets of  
14 less than five hundred thousand dollars shall set aside:

15           (a) Ten percent of gross income until the reserve equals seven and  
16 one-half percent of outstanding loans to members; and thereafter

17           (b) Five percent of gross income until the reserve equals ten percent of  
18 outstanding loans to members.

19           3. As used in this section, "outstanding loans to members" does not  
20 include loans to other credit unions, loans fully secured by a member's shares,  
21 loans made under Title I of the National Housing Act, or loans made under a  
22 federal or state student loan program or another similar loan program where the  
23 loan is guaranteed by an agency of the federal or state government.

24           4. The board of directors may increase or, where such fund equals or  
25 exceeds the total reserve required in subsection 2 of this section, decrease the  
26 proportion of gross income to be set aside as the reserve fund, and may transfer  
27 part or all of the undivided earnings to the reserve fund.

28           5. The board of directors may establish additional reserves. In addition,  
29 a special reserve for delinquent loans shall be established when required by  
30 regulation of the director of the division of credit unions] **All credit unions**  
31 **shall establish and maintain reserves sufficient to qualify for and**  
32 **maintain federal share insurance and meet any requirements**  
33 **concerning minimum reserves established by the director of the credit**  
34 **unions by regulation.**

370.353. 1. The board of directors of the merging credit union or credit  
2 unions, upon approving the plan of merger or consolidation, shall direct, by a  
3 resolution, that the plan be submitted at a meeting of the members or  
4 shareholders, which may be either an annual or special meeting. Notice of the  
5 meeting shall be [given as provided in the bylaws of each credit union affected,

6 or by letter addressed to the last known address, as reflected on the books of the  
7 credit union, to each member or shareholder thereof] **mailed or delivered to**  
8 **each member not more than thirty days and not less than fourteen days**  
9 **prior to the meeting. All members shall be given the opportunity to**  
10 **vote on the plan of merger or consolidation at a meeting or by written**  
11 **or electronic ballot received no later than the date and time announced**  
12 **for the meeting. All members should be provided the opportunity to**  
13 **vote, without being required to attend the meeting where the**  
14 **proposition is voted on.** The notice, whether the meeting is an annual or  
15 special meeting, shall state the place, day, hour, and purpose of the meeting, and  
16 a copy or summary of the plan of merger or plan of consolidation shall be included  
17 in or enclosed with the notice. The board of directors of the surviving credit union  
18 named in any such plan of merger need not submit the merger plan to its  
19 members but shall, instead, ratify such merger plan according to the procedure  
20 stated in section 370.351.

21 2. In the case of a consolidation, the board of directors of each credit  
22 union party to such plan of consolidation must submit the plan of consolidation  
23 to its members according to the procedure described in subsection 1 of this  
24 section.

25 3. The director may waive any membership meeting required under  
26 subsections 1 and 2 of this section upon the request of the board of directors of  
27 any of the merging or consolidating credit unions if the credit union seeking the  
28 waiver is in financial difficulty, if its field of membership is being lost or  
29 substantially reduced, or if it has only limited potential of growth.

370.359. 1. A credit union holding a certificate of organization under the  
2 laws of this state may be converted into a federal credit union under the laws of  
3 the United States by complying with the following requirements:

4 (1) The proposition for the conversion shall first be approved, and a date  
5 set for a vote thereon by the members, either at a meeting to be held on the date  
6 or by [written] ballot to be [filed] **cast** on or before the date, by a majority of the  
7 directors of the state credit union. Written notice of the proposition and of the  
8 date set for the vote shall then be delivered in person to each member, or mailed  
9 **or delivered** to each member at the address for the member appearing on the  
10 records of the credit union, not more than thirty nor less than [seven] **fourteen**  
11 days prior to the date. Approval of the proposition for conversion shall be by the  
12 affirmative vote of a majority of the members[, in person or in writing] **who vote**

13 **by written or electronic ballot. All members should be provided the**  
14 **opportunity to vote, without being required to attend the meeting**  
15 **where the proposition is voted on.**

16 (2) A statement of the results of the vote, verified by the affidavits of the  
17 president or vice president and the secretary, shall be filed with the director of  
18 the division of credit unions and the secretary of state within ten days after the  
19 vote is taken.

20 (3) Promptly after the vote is taken and in no event later than ninety days  
21 thereafter, if the proposition for conversion was approved by the vote, the credit  
22 union shall take such action as may be necessary under the United States law to  
23 make it a federal credit union, and within ten days after receipt of the federal  
24 credit union charter there shall be filed with the secretary of state and the  
25 director of the division of credit unions, a copy of the charter thus issued. Upon  
26 filing, the credit union shall cease to be a state credit union.

27 (4) Upon ceasing to be a state credit union, the credit union shall no  
28 longer be subject to any of the provisions of this chapter. The successor federal  
29 credit union shall be vested with all of the assets and shall continue responsible  
30 for all the obligations of the state credit union to the same extent as though the  
31 conversion had not taken place.

32 2. A federal credit union, organized under the laws of the United States,  
33 may be converted into a state credit union by:

34 (1) Complying with all federal requirements requisite to enabling it to  
35 convert to a state credit union;

36 (2) Filing with the director of the division of credit unions proof of the  
37 compliance, satisfactory to him; and

38 (3) Filing with the director of the division of credit unions a certificate of  
39 organization as required by this chapter.

40 3. When the director of the division of credit unions has been satisfied  
41 that all of these requirements, and all other requirements of this chapter, have  
42 been complied with, he shall approve the organization certificate, a copy of which  
43 shall be filed with the secretary of state. Upon approval, the federal credit union  
44 shall become a state credit union as of the date it ceases to be a federal credit  
45 union. The state credit union shall be vested with all of the assets and shall  
46 continue responsible for all of the obligations of the federal credit union to the  
47 same extent as though the conversion had not taken place.